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To: [All of CLAD \(EOIR\)](#); [All of Judges \(EOIR\)](#); [All of OCIJ JLC \(EOIR\)](#); [Allen, Patricia M. \(EOIR\)](#); [Anderson, Jill \(EOIR\)](#); [Baptista, Christina \(EOIR\)](#); [Barry, Robert \(EOIR\)](#); [Bauder, Melissa \(EOIR\)](#); [Berkeley, Nathan \(EOIR\)](#); [BIA ATTORNEYS \(EOIR\)](#); [BIA BOARD MEMBERS \(EOIR\)](#); [BIA TEAM JLC](#); [BIA TEAM P \(EOIR\)](#); [Brazill, Caitlin \(EOIR\)](#); [Burgie, Brea \(EOIR\)](#); [Burgus, Elizabeth \(EOIR\)](#); [Calvert, Irvina \(EOIR\)](#); [Cardenas, Lupe \(EOIR\)](#); [Carr, Donna \(EOIR\)](#); [Cicchini, Daniel \(EOIR\)](#); [Cowles, Jon \(EOIR\)](#); [Crossley, Maurice \(EOIR\)](#); [Cudo, Relanie \(EOIR\)](#); [Curry, Michelle \(EOIR\)](#); [D'Angelo, Matthew \(EOIR\)](#); [Evans, Brianna \(EOIR\)](#); [Friedman, Paul \(EOIR\)](#); [Gonzalez, Robert \(EOIR\)](#); [Grodin, Edward \(EOIR\)](#); [Hammond, Nicole \(EOIR\)](#); [Hartman, Alexander \(EOIR\)](#); [Hess, Chris \(EOIR\)](#); [Kaplan, Matthew \(EOIR\)](#); [King, Jean \(EOIR\)](#); [Korniluk, Artur \(EOIR\)](#); [Lang, Steven \(EOIR\)](#); [LERS, EOIR \(EOIR\)](#); [Lovejoy, Erin \(EOIR\)](#); [Martinez, Casey L. \(EOIR\)](#); [Mitchell, Carla \(EOIR\)](#); [Morteo, Cristina \(EOIR\)](#); [Noferi, Mark \(EOIR\)](#); [Nunez, Steven \(EOIR\)](#); [O'Hara, Shelley M. \(EOIR\)](#); [Park, Jeannie \(EOIR\)](#); [Podgorski, Monika \(EOIR\)](#); [Powell, Karen B. \(EOIR\)](#); [Ramirez, Sergio \(EOIR\)](#); [Rimmer, Phillip \(EOIR\)](#); [Robbins, Laura \(EOIR\)](#); [Rodrigues, Paul A. \(EOIR\)](#); [Rodriguez, Bernardo \(EOIR\)](#); [Rothwarf, Marta \(EOIR\)](#); [Sanders, John W. \(EOIR\)](#); [Santoro, Christopher A \(EOIR\)](#); [Schaaf, Joseph R. \(EOIR\)](#); [Smith, Terry \(EOIR\)](#); [Stutman, Robin M. \(EOIR\)](#); [Swanwick, Daniel \(EOIR\)](#); [Taufa, Elizabeth \(EOIR\)](#); [Vayo, Elizabeth \(EOIR\)](#)
Cc: [McHenry, James \(EOIR\)](#); [Reilly, Katherine \(EOIR\)](#); [Sheehy, Kate \(EOIR\)](#); [Moutinho, Deborah \(EOIR\)](#); [Alder Reid, Lauren \(EOIR\)](#); [Adams, Amanda \(EOIR\)](#); [Pease, Jeffrey \(EOIR\)](#); [Macri, Andrea \(EOIR\)](#); [Morgan, Kenosha \(EOIR\)](#); [Phung, Mai \(EOIR\)](#); [EOIR Library \(EOIR\)](#)
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**EXECUTIVE OFFICE FOR
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Office of Policy | Legal Education and
Research Services Division

| Policy & Case Law Bulletin
November 30, 2018

Federal Agencies

DOJ

[Virtual Law Library Weekly Update](#) — **EOIR**

This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

[USCIS Clarifies the L-1 One-Year Foreign Employment Requirement](#)

On November 29, 2018, USCIS announced a [policy memorandum](#) (PM) dated November 15, 2018 "clarify[ing] the requirement that the qualifying organization employ the principal L-1 beneficiary abroad for 1 continuous year out of the 3 years before the time of petition filing ('one-year foreign employment requirement')." USCIS explained that "[t]his clarification is intended to ensure consistent adjudications of L-1 petitions with respect to the 1-year foreign employment requirement." The Adjudicator's Field Manual (AFM) was updated by replacing chapter 32.3(b).

DOS

[DOS Updates 9 FAM](#)

DOS made updates to section [602.1](#) (visa contacts) to clarify the document delivery procedures, and section [601.4 \(U\)](#) (supervision and management issues) with revisions to reflect new guidance on notifications regarding IV-Related Reports and updating security classification markings to the subchapter.

Third Circuit

[Salmoran v. Attorney Gen. United States](#)

No. 17-2683, 2018 WL 6166242 (3d Cir. Nov. 26, 2018) (Aggravated Felony; Crime of Child Abuse)

The Third Circuit granted the PFR in part, concluding that Salmoran’s New Jersey child pornography conviction under N.J. Stat. Ann. § 2C:24-4(b)(5)(b) is not categorically an aggravated felony relating to child pornography, rendering him eligible to apply for cancellation of removal. The court determined that the plain language of section 2C:24-4(b)(5)(b) encompasses a broader range of conduct than the federal offense defined in 8 U.S.C. § 1101(a)(43)(I), noting that the federal statute expressly emphasizes depictions of the “genitals or pubic area” of a child, whereas the state statute “applies to any nudity – and not necessarily that which shows genitals or the pubic area.” Further, relying on its precedent decision in *Singh v. Att’y Gen.*, 839 F.3d 273 (3d Cir. 2016), the court determined that the realistic probability inquiry does not apply “where the statute expressly authorizes the state government to enforce broader conduct,” and thus, “Salmoran does not need to identify cases in which New Jersey actually prosecuted overbroad conduct.” Lastly, the court concluded that section 2C:24-4(b)(5)(b) categorically qualifies as a “crime of child abuse” despite Salmoran’s contention that possession of child pornography did not entail exploitation of the child.

Sixth Circuit

[Tomaszczuk v. Whitaker](#)

No. 17-4229, 2018 WL 6055236 (6th Cir. Nov. 20, 2018) (Due Process; Equal Protection)

The Sixth Circuit denied the PFR, concluding that “[b]ecause [Tomaszczuk] is a deportable alien with an interest only in discretionary relief, he may not bring [the] void-for-vagueness challenge under the Due Process Clause.” The court also concluded that “[b]ecause Congress could find that habitual drunkenness was rationally related to lacking good moral character, 8 U.S.C. § 1101(f)(1) does not violate the Equal Protection Clause.” The court determined that Tomaszczuk did not exhaust his administrative remedies with respect to his claims that the IJ and the Board violated his Due Process rights by “harboring bias against him” and considering evidence outside the relevant ten-year period.

Eleventh Circuit

[Bula Lopez v. U.S. Attorney Gen.](#)

No. 17-15179, 2018 WL 6074387 (11th Cir. Nov. 21, 2018) (Jurisdiction; Controlled Substances; Aggravated Felony)

The Eleventh Circuit denied the PFR, concluding that substantial evidence supported the Board's finding that Bula Lopez was convicted under Fla. Stat. § 893.13(1)(a), governing possession with intent to deliver, rather than simple possession under Fla. Stat. § 893.13(6)(a). Therefore, the court lacked jurisdiction pursuant to INA § 242(a)(2)(C) to review Bula Lopez's claim regarding ambiguity in his conviction records. The court also determined that "the Board did not err in concluding that Flunitrazepam is a controlled substance and that Bula Lopez's conviction for possessing Flunitrazepam with intent to deliver is a 'violation of . . . [a] law or regulation of a State . . . relating to a controlled substance (as defined in section 802 of Title 21).'" Finally, the court concluded that Fla. Stat. § 893.13(1)(a) is an aggravated felony, rendering Bula Lopez ineligible to pursue a section 212(h) waiver of inadmissibility, since Flunitrazepam is a controlled substance under federal law (and has been since late 1984).